

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

TERRANCE D. MORTON, SR.,

v.

CVS HEALTH,

Plaintiff,

Defendant.

Case No. 2:17-cv-01247-RFB-GWF

FINDINGS AND RECOMMENDATION

12 This matter is before the court on Plaintiff's failure to comply with the court's Order (ECF
13 No. 7). This matter is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB
14 1-4 of the Local Rules of Practice.

15 Plaintiff is proceeding in this action *pro se* and he submitted a complaint on May 3, 2017
16 and an amended complaint on May 23, 2017. *See* Compl. (ECF Nos. 1-1, 3). The court issued a
17 screening order (ECF No. 4) granting Plaintiff permission to proceed *in forma pauperis* and
18 screening the complaint pursuant to 28 U.S.C. § 1915(e). The undersigned found that Plaintiff's
19 complaint failed to state a valid claim and allowed him until July 25, 2018, to file an amended
20 complaint. The screening order warned Plaintiff that a failure to file an amended complaint
21 addressing the deficiencies explained by the court would result in a recommendation to the district
22 judge that this case be dismissed. On December 17, 2018, Plaintiff filed a second amended
23 complaint. ECF No. 5. On March 7, 2019, the Court issued a screening order and found that
24 Plaintiff's second amended complaint failed to cure the deficiencies identified in its previous
25 screening order. The Court allowed Plaintiff until April 8, 2019 to file a third amended complaint.

26 On May 23, 2019, the court entered an Order to Show Cause (ECF No. 7) directing Plaintiff
27 to "show cause, in writing, **no later than May 31, 2019**, why this matter should not be dismissed
28 for a failure to file an amended complaint." Plaintiff was again warned that failure to file an

1 amended complaint would result in a recommendation to the district judge that this case be
 2 dismissed. To date, Plaintiff has not filed an amended complaint, requested an extension of time,
 3 or taken any other action to prosecute this case. Accordingly,

4 **IT IS HEREBY RECOMMENDED** that Plaintiff's Amended Complaint (ECF No. 5) be
 5 DISMISSED.

6 **IT IS FURTHER RECOMMENDED** that the Clerk of the Court be instructed to close
 7 the case and enter judgment accordingly.

8 Dated this 13th day of June, 2019.

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 10 
 11 GEORGE FOLEY, JR.
 12 UNITED STATES MAGISTRATE JUDGE

13 **NOTICE**

14 This Report of Findings and Recommendation is submitted to the assigned district judge
 15 pursuant to 28 U.S.C. § 636(b)(1) and is not immediately appealable to the Court of Appeals for
 16 the Ninth Circuit. Any notice of appeal to the Ninth Circuit should not be filed until entry of the
 17 district court's judgment. *See* Fed. R. App. Pro. 4(a)(1). Pursuant to LR IB 3-2(a) of the Local
 18 Rules of Practice, any party wishing to object to a magistrate judge's findings and
 19 recommendations shall file and serve *specific written objections*, together with points and
 20 authorities in support of those objections, within 14 days of the date of service. *See also* 28 U.S.C.
 21 § 636(b)(1); Fed. R. Civ. Pro. 6, 72. The document should be captioned "Objections to Magistrate
 22 Judge's Report of Findings and Recommendation," and it is subject to the page limitations found
 23 in LR 7-3(b). The parties are advised that failure to file objections within the specified time may
 24 result in the district court's acceptance of this Report of Findings and Recommendation without
 25 further review. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). In addition,
 26 failure to file timely objections to any factual determinations by a magistrate judge may be
 27 considered a waiver of a party's right to appellate review of the findings of fact in an order or
 28 judgment entered pursuant to the recommendation. *See Martinez v. Ylst*, 951 F.2d 1153, 1156 (9th
 Cir. 1991); Fed. R. Civ. Pro. 72.